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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,073	12/20/2001	William C. Dengler	2824/1	9825
7590 11/16/2005		EXAMINER		
Adams, Schwartz & Evans, P.A.		BLECK, CAROLYN M		
2180 Two First Union Center		ART UNIT		
Charlotte, NC 28282		PAPER NUMBER		

3626

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,073

Applicant(s)

DENGLER, WILLIAM C.

Examiner

Carolyn M. Bleck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 September 2005 has been entered.
2. This communication is in response to the RCE filed 23 September 2005. Claims 1-32 have been cancelled. Claims 33-46 are newly added.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 33-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 33, line 11, "the selected medical condition" lacks proper antecedent basis. For purposes of applying prior art, "the selected medical condition" is a diagnosis or condition.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665).

(A) As per claims 33 and 38-39, Coli discloses a network-based method for ordering and reporting medical tests comprising (Abstract):

(a) providing a distributed computing and data communications network for medical test ordering and results reporting including (col. 9 lines 5-8):

(i) a server having a patient database for receiving and storing a test record, wherein the patient database server accepts requests for patient test records and retrieves those records from the patient database and other remote repositories, wherein a physician or laboratory technician using a client program is able to order the test resulting in the test record and update the test record (Fig. 2-3, 13, col. 3 lines 25-30, col. 7 line 49 to col. 8 line 12, col. 9 lines 4-60, col. 10 line 53 to col. 11 line 25, col. 12 line 62 to col. 13 line 29, col. 14 lines 42-67, col. 15 lines 14-65);

(ii) client computer communicating with the database via a communications network for permitting physicians, hospitals, and insurers to access the data in records

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and the test results via a client program, where the records and test results are used to provide reports of cumulative test results, wherein the tests are associated with a diagnosis code and are used to provide an accurate diagnosis for the patient, wherein based on the test results, drugs or medical devices and treatment information that may be needed by the patient are identified and displayed to the physician (providing treatment information, drugs, and medical devices associated with a particular diagnosis and test result is considered to be a form of "coordinating a plan of care") (Fig. 2-3, 6-7, col. 3 line 53 to col. 4 line 2, col. 21 line 10 to col. 22 line 31, col. 9 line 40 to col. 10 line 61);

(b) using the client computer to process the data entered by the physician to create a "plan of care" (It is noted in Fig. 6-7 a physician enters a laboratory test associated with a diagnosis to diagnose a disease and the physician also enters a diagnosis) (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17);

(c) communicating over the communications network the laboratory test associated with a diagnosis to diagnose a disease and the diagnosis code associated with the diagnosis to a laboratory (Fig. 2-3, col. 3 line 43 to col. 4 line 8, col. 4 line 62 to col. 5 line 65, col. 11 line 8 to col. 14 line 67, col. 20 line 13 to col. 22 line 31);

(d) receiving and storing the results of the test in a database in accordance with the test ordered and associated with a diagnosis by a physician (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17, col. 14 lines 27-67); and

(e) reporting the test results or cumulative test results for use by a physician in determining a treatment of a disease based on the test results, wherein the results are

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stored in a test record(Fig. 11, 18-20, col. 14 line 42 to col. 15 line 13, col. 17 line 34 to col. 20 line 4, col. 20 line 13 to col. 22 line 32).

Coli fails to expressly disclose including scheduling information relating to a diagnostic test, creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule and receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results.

Bair discloses scheduling information pertaining to a test, defining a new questionnaire and scheduling a questionnaire and having the physician give the questionnaires to patients to determine patient satisfaction with the particular treatment in accordance with the scheduled questionnaire; and receiving the results of the schedules questionnaires and storing the results in a database (Fig. 16-22, col. 10 lines 48-56, col. 12 line 3 to 13 line 22, col. 15 lines 28-61).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Bair within the method of Coli with the motivation of allowing a healthcare provider to assess the relative effectiveness of a particular patient's treatment over time (Bair; col. 2 lines 1-22).

(B) As per claim 34, Coli discusses the communications network being the Internet (col. 18 line 36 to col. 19 line 53).

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(C) As per claim 35, Coli discussed the treatment being a drug treatment, the use of an outpatient procedure or inpatient procedure using a medical device (col. 16 lines 28-67).

(D) As per claim 36, Coli discloses providing a physician with access to the data through a web browser (col. 18 line 15 to col. 20 line 3). The Examiner respectfully submits that it is well known in the art to have a systems administrator maintain a web site. The motivation being to allow for a secure web site.

(E) As per claim 37, Coli discloses using a password to access the website (col. 10 lines 19-42 and col. 18 line 15 to col. 20 line 3).

7. Claims 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coli et al. (6,018,713) in view of Bair et al. (6,108,665) and Teagarden et al. (6,104,631).

(A) As per claims 40 and 45-46, Coli discloses a network-based method for ordering and reporting medical tests comprising (Abstract):

(a) providing a distributed computing and data communications network for medical test ordering and results reporting including (col. 9 lines 5-8):

(i) a server having a patient database for receiving and storing a test record, wherein the patient database server accepts requests for patient test records and retrieves those records from the patient database and other remote repositories,

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wherein a physician or laboratory technician using a client program is able to order the test resulting in the test record and update the test record (Fig. 2-3, 13, col. 3 lines 25-30, col. 7 line 49 to col. 8 line 12, col. 9 lines 4-60, col. 10 line 53 to col. 11 line 25, col. 12 line 62 to col. 13 line 29, col. 14 lines 42-67, col. 15 lines 14-65);

(ii) client computer communicating with the database via a communications network for permitting physicians, hospitals, and insurers to access the data in records and the test results via a client program, where the records and test results are used to provide reports of cumulative test results, wherein the tests are associated with a diagnosis code and are used to provide an accurate diagnosis for the patient, wherein based on the test results, drugs or medical devices and treatment information that may be needed by the patient are identified and displayed to the physician (providing treatment information, drugs, and medical devices associated with a particular diagnosis and test result is considered to be a form of "coordinating a plan of care") (Fig. 2-3, 6-7, col. 3 line 53 to col. 4 line 2, col. 21 line 10 to col. 22 line 31, col. 9 line 40 to col. 10 line 61);

(b) using the client computer to process the data entered by the physician to create a "plan of care" (It is noted in Fig. 6-7 a physician enters a laboratory test associated with a diagnosis to diagnose a disease and the physician also enters a diagnosis) (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17);

(c) communicating over the communications network the laboratory test associated with a diagnosis to diagnose a disease and the diagnosis code associated

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with the diagnosis to a laboratory (Fig. 2-3, col. 3 line 43 to col. 4 line 8, col. 4 line 62 to col. 5 line 65, col. 11 line 8 to col. 14 line 67, col. 20 line 13 to col. 22 line 31);

(d) receiving and storing the results of the test in a database in accordance with the test ordered and associated with a diagnosis by a physician (Fig. 3, 6-7, and 9, col. 11 line 30 to col. 12 line 17, col. 14 lines 27-67); and

(e) reporting the test results or cumulative test results for use by a physician in determining a treatment of a disease based on the test results, wherein the results are stored in a test record (Fig. 11, 18-20, col. 14 line 42 to col. 15 line 13, col. 17 line 34 to col. 20 line 4, col. 20 line 13 to col. 22 line 32).

Coli fails to expressly disclose including scheduling information relating to a diagnostic test, creating and storing a survey schedule and prompting the coordinating party to conduct patient satisfaction surveys to monitor the patient's progress within the treatment track in accordance with the survey schedule and receiving the results of the patient satisfaction surveys in accordance with the survey schedule, and storing the survey results.

Bair discloses scheduling information pertaining to a test, defining a new questionnaire and scheduling a questionnaire and having the physician give the questionnaires to patients to determine patient satisfaction with the particular treatment in accordance with the scheduled questionnaire; and receiving the results of the scheduled questionnaires and storing the results in a database (Fig. 16-22, col. 10 lines 48-56, col. 12 line 3 to 13 line 22, col. 15 lines 28-61).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Bair within the method of Coli with the motivation of allowing a healthcare provider to assess the relative effectiveness of a particular patient's treatment over time (Bair; col. 2 lines 1-22).

Coli and Bair do not expressly disclose using the method for managing GERD. However, Teagarden discloses a method for optimizing health care therapy for GERD (col. 6 lines 20-25, col. 17 lines 18-28, col. 25 lines 1-5). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Teagarden within the method taught collectively by Coli and Bair with the motivation of optimizing therapy for chronic diseases, such as GERD (col. 6 lines 20-67)

(B) As per claim 41, Coli discusses the communications network being the Internet (col. 18 line 36 to col. 19 line 53).

(C) As per claim 42, Coli discussed the treatment being a drug treatment, the use of an outpatient procedure or inpatient procedure using a medical device (col. 16 lines 28-67).

(D) As per claim 43, Coli discloses providing a physician with access to the data through a web browser (col. 18 line 15 to col. 20 line 3). The Examiner respectfully submits that it is well known in the art to have a systems administrator maintain a web site. The motivation being to allow for a secure web site.

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(E) As per claim 44, Coli discloses using a password to access the website (col. 10 lines 19-42 and col. 18 line 15 to col. 20 line 3).

Response to Arguments

8. Applicant's arguments with respect to claims 33-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (571) 272-6767. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (571) 272-6776.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

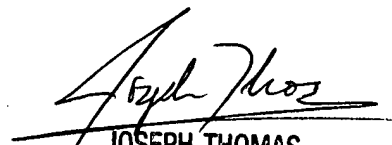
(571) 273-8300	[Official communications]
(571) 273-8300	[After Final communications labeled "Box AF"]
(571) 273-6767	[Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to the Knox Building, Alexandria, VA.

CB

CB

November 2, 2005


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600